

CERTIFICATE OF FACSIMILE

I hereby certify that on 3/15/2004, this paper (along with any paper referred to as being attached or enclosed) is being transmitted via facsimile to 703-812-9306 to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Shauna Murray

PATENT

Applicant: **Naidu, A.S.**
Serial No.: 10/021871
Filed: 12/12/01
Title: Probiotic Compositions
Derived from Lactobacillus
casei Strain KE01

EXAMINER: WARE, DEBORAH K.
Group Art Unit: 1651
Atty Docket No.: 14381.0012 (formerly
20424.12-11)

Mail Stop Non Fee Amendment
Honorable Commissioner for Patents
and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT OF APPLICANT'S ATTORNEY OF RECORD REGARDING
AVAILABILITY OF DEPOSIT PURSUANT TO THE BUDAPEST TREATY

I, Louis C. Cullman, do hereby declare and say:

1. I am registered to practice before the United States Patent and Trademark Office; my registration number is 39,645.
2. I am the attorney of record in the above-identified matter and have full authority to represent the applicant, A. S. Naidu, on matters before the United States Patent and Trademark Office.
3. On information and belief, the biological material disclosed and claimed in this application were deposited with the American Type Culture Collection, 10801 University Boulevard, Manassas, VA 20110-2209 on December 21, 2001 under the following name and accession number to assure availability of the biological materials to the public:

Identification Number by Depositor

Lactobacillus casei KE01

Patent Deposit Designation

PTA-3945

DOCSOC/1019782v1/14381-0012

Declaration under the Budapest Treaty USPASN 10/021,871
14381/0012

A copy of the International Form "Receipt in the Case of an Original Deposit Issued Pursuant to Rule 7.3 and Viability Statement Issued Pursuant to Rule 10.2" is attached hereto.

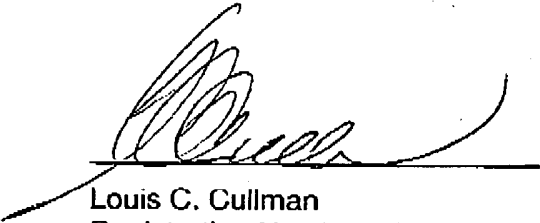
4. On information and belief, the American Type Culture Collection has acquired the status of International Depository Authority within the meaning of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure.

5. That said biological material has been deposited under conditions which insure that access to the cultures will be available during the pendency of the above-identified patent application to one determined by the Commissioner of Patents and Trademarks to be entitled thereto under 37 C.F.R. § 1.14 and 35 U.S.C. § 122.

6. That no later than issuance of a patent on the above-identified patent application, the applicant, Dr. A. S. Nadiu, will irrevocably remove any restrictions as to public availability of the herein-identified biological material, and will replace the same biological material should it become non-viable during the period that extends thirty (30) years from the date of the deposit, or the life of the enforceable patent, or the period of five (5) years after the last public request for the deposit, whichever period is longest.

7. I further declare that all statements made herein of my own knowledge are true and correct and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful statements may jeopardize the validity of the application or any patent issuing therefrom.

March 15, 2004



Louis C. Cullman
Registration Number 39,645
Attorney for Applicant

ATCC

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BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

INTERNATIONAL FORM

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3 AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.2

To: (Name and Address of Depositor or Attorney)

en-N-tech, Inc.
Attn: A. Satyanarayan Naidu
981 Corporate Center Drive, #120
Pomona, CA 91768

Deposited on Behalf of: en-N-tech, Inc.

Identification Reference by Depositor:
Lactobacillus casei: KE01

Patent Deposit Designation
PTA-3945

The deposit was accompanied by: ☐ a scientific description ☒ a proposed taxonomic description indicated above.

The deposit was received December 21, 2001 by this International Depository Authority and has been accepted.

AT YOUR REQUEST: ☒ We will inform you of requests for the strain for 30 years.

The strain will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the strain, and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said strain.


If the culture should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace it with living culture of the same.

The strain will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the culture cited above was tested December 28, 2001. On that date, the culture was viable.

International Depository Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:


Tanya Nunnally, Patent Specialist, Patent Depository

Date: January 8, 2002

cc: Louis C. Cullman
(Ref: Docket or Case No.: 20424.12)